Having considered all available evidence I have not been persuaded that the government valuer was wrong in taking the value obtaining in November 1980 in respect of comparable lot 756 and the values of the neighbouring lots for guidance on the market value of the subject land. Even if he had been aware of the 1984 sale transaction in respect of Lot 756 he could safely have given no credence to it. Coming back to the 1980 sale transaction in respect of lot 756 which RW1 took into account it must be said that lot 756 was superior in many ways on the relevant date of valuation. It was a first layer lot while the subject lot was a second layer lot and the access to the subject lot then was through lot 756. Lot 756 was some 3 to 6 feet below the road level while the subject lot was some 6 to 7 feet lower; the subject lot would have required more filling to be done to raise its level. True there were fruit trees on the subject lot but none of the applicants gave evidence as to the amount of income they derived from the land. In all the circumstances I cannot see that the Collector was wrong in accepting the valuation of the subject lot at RM11,500 per relong. The award of the Collector must stand and I would dismiss the application with costs.

DUNIA RAYA ENTERPRISE SDN. BHD.
v.
GANESAN @ MUNIANDIE A/L IRUSEN @ ERUSEN

HIGH COURT, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[CIVIL SUIT NO. 22-269-91]
10 APRIL 1992

INJUNCTION: Application for - Whether grant of injunction would require continuous supervision - Whether damages adequate remedy.

LAND LAW: Caveat against the land - Application to set aside - Whether plaintiffs interest is capable of protection by the entrance of a caveat.

By an agreement in writing dated 3 November 1989 the defendant an owner of land comprised in G.M. 68, Lot 252 Mukim Damansara (the said land) agreed to allow the plaintiff to enter the said land to excavate earth. The excavations were to be completed by 15 May 1990. The plaintiffs claim that time was extended by acquiescence and that the agreement was still alive for performance in 1991.

On 23 November 1990 the defendant entered into a written agreement to sell the whole of the said land. The purchaser filed a caveat against the said land on 27 November 1990. The plaintiff filed a caveat against the said land on 13 February 1991 and on being served with a notice to remove their caveat, filed this action seeking damages for breach of contract and an injunction to prevent the defendant from interfering with its rights under the agreement to enter the said land, excavate and transport out.

The defendant applied to set aside an order granted to the plaintiff to extend the caveat it had filed to protect its interest pending hearing of its suit.

Held:

[1] The plaintiff had no exclusive right to the possession of the land as such, only a right to enter from time to time to take something from the land.

[2] Such a right was not caveatable because it was not precisely defined. Plaintiffs caveat must be removed immediately.

[3] Specific relief is a discretionary remedy which the court will not undertake where it

involves continuous supervision or where damages are an adequate remedy.

[4] Damages are an adequate remedy for the plaintiffs loss and they can be easily quantified.

[Plaintiffs application dismissed with costs. Defendant's application allowed with costs. Inquiry ordered as to damages suffered by defendant by the lodging of the caveat.]

Case referred to:
*In re Caveat of Gamboola Cabonne Phosphates Ltd. [1991] 19 SR (NSW) (**refd**)*

For the plaintiff - P.K. Yong; M/s. P.K. Yong & Co.
For the defendant - Dr. Thambirajah; M/s. Thambirajah & Associates

JUDGMENT

Mahadev Shankar J:
The defendant (Ganesan) is the owner of the land comprised in G.M. 68 Lot 252 Mukim Damansara (the said land). On 3rd November 1989 he entered into a written agreement with the plaintiff (Dunia) (the said agreement). It stated *inter alia* that for a sum of RM6000 Ganesan allowed Dunia to enter the said land to excavate earth. Dunia claims Ganesan breached the agreement, and filed this suit. By way of interlocutory relief Dunia applied for an extension of a caveat it had filed to protect its interests pending suit. In the absence of Ganesan's solicitors although duly served, I granted this application. Ganesan is applying to set aside this order. Secondly I have Dunia's application for an injunction to prevent Ganesan from interfering with Dunia's rights under the said agreement to enter the said land, excavate and transport out.

By the said agreement all the excavations were done in accordance with a plan No. JV 1253/09/89/-D1. Dunia was permitted to enter the said land forthwith and complete their excavations by 15 May 1990. If Ganesan breached the contract Dunia could after giving Ganesan two weeks notice to remedy the breach, caveat the said land. The said agreement was declared irrevocable until 15 May 1990.

Ganesan intended to develop the said land into a housing project. Dunia had land nearby which needed filling. The price of RM6000 is obviously low and reflects the mutual benefits to both parties which would follow a cut and fill operation.

The said land measures over three acres. Prior to December 1988 Ganesan says he had leased about 1 1/2 acres to Kean Soon Hardware Sdn. Bhd. to store hardware. They owned the next Lot 253. After the lease expired they continued to use the land to store their materials. In addition Best Pile Sdn. Bhd. brought pre-cast piles and stored them on the said land about a month after the excavations began. At some point in time Ganesan entered into a lease agreement with Best Pile for this purpose.

The excavation operation did not proceed smoothly. Ganesan contends that by April 1990 he had noticed that Dunia was not keeping to the agreed levels or gradients. Differences arose with Dunia on this account. He treated the said agreement as having lapsed on the 15 May 1990. Subsequent negotiations to settle agreed levels were abortive. Ganesan contends that he did not owe them any further obligations.

Dunia on the other hand are contending that Ganesan obstructed their excavation rights by allowing third parties to bring materials and machinery on to the said land. This delayed their works. Their claim is that time was extended by acquiescence on Ganesan's part in entering into further negotiations after May 1990. Dunia's claim is that the said agreement was still alive for performance in 1991. There were serious differences of opinion between the parties as to whether Dunia should be allowed to continue to excavate and if so to what depth. For the reasons which appear hereafter I do not think I need to go into this in detail at this stage.

On 23 November 1990 Ganesan entered into a formal written agreement to sell the whole of the said land to Liew Yoke Chai & Sons Holding Sdn. Bhd. These purchasers filed a caveat against the whole of the said land on 27 November 1990.

Dunia's solicitors conducted a search of the land office title on 15 January 1991. They noticed this caveat. On the 13 February 1991 Dunia filed its own caveat (the said caveat). When Dunia was served with notice to remove this caveat in August 1991 Dunia filed this action.

The statement of claim is primarily a prayer for general and special damages although there is a claim also for specific performance and an injunction.

The order which I made extending Dunia's caveat was virtually an order in default of Ganesan's Counsel's appearance. In the application for this order and in the application to set aside neither party cited any authority to assist the court on whether a caveat can be entered to protect this kind of interest. The issue is an important one. The nearest the court has come to a helpful case is *In re Caveat of Gamboola Cabonne Phosphates Ltd*. [1991] 19 SR (NSW) 227 where a person claiming under an agreement to exclusive right to mine for minerals was held to have a caveatable interest. Here however there was no exclusive right to possession of the land as such, only a right to enter from time to time to take something from the land. I do not think such a right is caveatable in this case because it is not precisely defined. As I am presently advised of the law on the subject I must hold that the plaintiff's caveat must be removed immediately.

The next issue is the injunction prayed for by the plaintiffs. This is to prevent Ganesan from dealing with the land in any way until the suit is decided. The object is to preserve the alleged "*status quo*" but to what purpose? In the very nature of this action this must be with a view to granting specific relief to enforce the excavation rights claimed by Dunia. However it is axiomatic that specific relief is a discretionary remedy which the court will not undertake where it involves continuous supervision or where damages are an adequate remedy.

This is not the kind of case where the court will grant specific performance because it does involve continuous supervision. Besides all Dunia has lost is a measurable quantity of earth which any quantity surveyor should be able to estimate once the levels of the excavation said to be agreed has been established to the satisfaction of this Court. Damages can then be easily quantified.

So the claim to the injunction also fails. I therefore dismiss the plaintiffs summons (Enc. 3) and allow the defendant's summons (Enc. 14) in each case with costs to be taxed and paid by the plaintiff in any event. I also order an inquiry as to the damages suffered by the defendant by the lodging of the said caveat, at the trial of this action. Such damages shall be made the subject of a proper counterclaim.

It follows that the plaintiff must be left to seek its fortunes at the trial of this action.